

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CIVIL CASE NO. 1:16-cv-00202-MR  
CRIMINAL CASE NO. 1:02-cr-00105-MR-DLH-4

**MICHAEL ANTHONY JENKINS,** )

**Petitioner,** )

**VS.**

**UNITED STATES OF AMERICA,**

**Respondent.** )

## ORDER

**THIS MATTER** is before the Court on the motion of the United States requesting that the Court enter an order holding this action in abeyance. [CV Doc. 3].<sup>1</sup> According to the government's motion, defense counsel does not object to its request. [Id.].

Petitioner pleaded guilty to conspiracy to possess with intent to distribute cocaine base, in violation of 21 U.S.C. §§ 841(a)(1) and 846, and brandishing a firearm in relation to a drug trafficking crime and aiding and

<sup>1</sup> Citations to the record herein contain the relevant document number referenced preceded by either the letters “CV” denoting the document is listed on the docket in the civil case file number 1:16-cv-00202-MR, or the letters “CR” denoting the document is listed on the docket in the criminal case file number 1:02-cr-00105-MR-DLH-4.

abetting the same, in violation of 18 U.S.C. §§ 924(c)(1) and 2. [CR Doc. 292]. The presentence report noted that Petitioner had at least two prior qualifying convictions that triggered the Career Offender enhancement under § 4B1.2 of the Sentencing Guidelines: (1) a 1993 North Carolina conviction for possession with intent to sell/deliver cocaine and sale and delivery of cocaine (two counts, consolidated for sentence); and (2) a 1993 North Carolina conviction for assault on a female. The Court sentenced Petitioner as a Career Offender to a total term of 292 months. [Id.].

On June 23, 2016, Petitioner commenced this action by filing a petition pursuant to 28 U.S.C. § 2255. [CV Doc. 1]. In his petition, Petitioner contends that, in light of Johnson v. United States, 135 S. Ct. 2551 (2015), his prior North Carolina conviction for assault on a female no longer qualifies as a “crime of violence” under the Guidelines. [Id. at 3-4]. Consequently, Petitioner argues his Career Offender designation is improper and thus his sentence is unlawful. [Id.].

In response to the petition, the government has filed a motion to hold this proceeding in abeyance. [CV Doc. 3]. The government notes that this case will be affected by the Supreme Court’s decision next Term in Beckles v. United States, 616 Fed. Appx. 415 (11th Cir.), cert. granted, 2016 WL 1029080 (U.S. June 27, 2016) (No. 15-8544). [Id. at 2]. One of the questions

presented in Beckles is whether Johnson applies retroactively to cases collaterally challenging federal sentences enhanced under the residual clause in U.S.S.G. § 4B1.2(a)(2). The residual clause invalidated in Johnson is identical to the residual clause in the Career Offender provision of the Guidelines, § 4B1.2(a)(2) (defining "crime of violence").

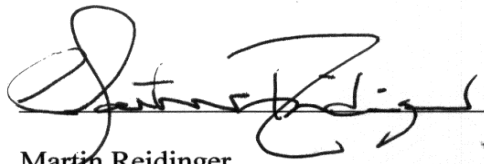
Based upon the reasons given by the government, and without objection by Petitioner, the Court concludes that the government's motion should be granted.

### **ORDER**

**IT IS, THEREFORE, ORDERED** that the government's motion to place this case in abeyance [CV Doc. 3], is hereby **GRANTED** and this matter is hereby held in abeyance pending the Supreme Court's decision in Beckles. Thereafter, the government shall have 60 days from the date the Supreme Court decides Beckles within which to file its response in this matter.

**IT IS SO ORDERED.**

Signed: September 12, 2016

  
Martin Reidinger  
United States District Judge

